



U.S. Citizenship
and Immigration
Services

January 31, 2007

Questions and Answers

BUILDING AN IMMIGRATION SERVICE FOR THE 21st CENTURY *USCIS Fee Adjustments*

Under the Notice of Proposed Rule Making, applicants and petitioners will see substantially improved service under a new fee structure, with average processing times projected to be reduced by as much as 20 percent by the end of fiscal year 2009. U.S. Citizenship and Immigration Services (USCIS) is proposing to adjust the immigration benefit application and petition fees of the Immigration Examinations Fee Account. The proposal comes after USCIS conducted a comprehensive review of the resources and activities funded by the Account that found that current fees do not reflect the full costs of services the Agency should provide. The proposal outlines USCIS' intended fee schedule which is designed to enhance USCIS' ability to address national security and public safety concerns, prevent and detect fraud, and invest in comprehensive transformation efforts to result in a more efficient and effective organization. It is the policy of the United States government, reflected in OMB Circular A-25, to fully recover the costs of providing benefits and services. The immigration benefits that USCIS confers are extremely valuable, and it is appropriate that prospective immigrants bear the full costs of the services provided.

Finally, the proposed adjustment will allow the agency to both sustain the current six-month processing standard and improve upon it by reducing its application processing times by an average of 20 percent over the next two years.

BACKGROUND

USCIS undertook a careful and comprehensive fee review to revise its application and petition fees in order to ensure it recovers its full business costs. Although USCIS last updated its fees on Oct. 26, 2005, solely based on inflationary increases, the fee review conducted is the agency's first comprehensive review since fiscal year 1998. At that time, fees increased by an average of 76 percent (from \$85 to \$150). Today, having concluded its fee review, USCIS transmitted its proposed new fee structure to the *Federal Register*; it will be available for public viewing and comment at www.regulations.gov for a 60-day period beginning February 1, 2007.

The proposed increases will ensure adequate funding to fully meet the USCIS goals to improve customer service and delivery of benefits, ensure national security and public safety, and meet business modernization needs. The agency will also merge fees for certain applications so that applicants will pay a single fee rather than paying several fees for related services.

Under the proposal, the cost to applicants for application and petition fees will now average about \$438, an increase of \$174 or 66 percent from the current average (when combined with the biometric fee for obtaining applicant fingerprints and photographs). The proposal also raises the biometric fee by \$10, to \$80.

In addition, in the Notice of Proposed Rule Making, USCIS is proposing to eliminate certain interim benefit fees for applicants who apply for adjustment of status to permanent residence. Also, the proposal will exempt

applicants for humanitarian reasons from paying a fee for certain benefits including T-Nonimmigrant Status (I-914) – Victims of Human Trafficking; and applicants seeking immigrant classification under the Violence Against Women Act.

USCIS' current procedure of waiving fees for various classes of applicants, for example those filing for asylum, and members of the U.S. Armed Forces filing for naturalization, will continue. The proposal will also clarify the waiver process by limiting fee waivers to specific situations, including consideration for one's inability to pay. In granting a waiver, USCIS will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit.

QUESTIONS AND ANSWERS:

Q: What is the actual increase, and what are some examples of fees that applicants will be paying under this proposed structure?

- A. The weighted average increase for application and petition fees will be approximately 86 percent. The increase in actual costs to applicants and petitioners will be only 66 percent, however, because applicants for adjustment of status will no longer be required to pay a fee to apply for interim benefits. Specifically, this constitutes an average of \$438, an increase of \$174 (66 percent) from the current average.

Several examples of current and proposed fees for specific applications and petitions include: (1) Application to Replace a Permanent Resident Card (I-90) – current fee is \$190; proposed fee is \$290; (2) Petition for Alien Fiancé (I-129F) – current fee is \$170; proposed fee is \$455; (3) Application to Register Permanent Status or Adjust Status (I-485) – current fee is \$325; proposed fee is \$905¹; and (4) Application for Naturalization (N-400) – current fee is \$330; proposed fee is \$595.

Q. When are the new fees effective?

- A. A proposed rule on the fee adjustments will be published in the *Federal Register* on February 1, 2007. The proposed rule provides for a 60-day public comment period. After receipt and analysis of the comments, USCIS will draft a final rule reflecting the public input. It is important to note that a proposed rule *does not and cannot* by itself, raise any immigration benefit application fees. Publication is only the beginning of the regulatory process where an agency announces its intentions to change its current regulations, and solicits public comments on the effect of these changes.

Q. Why does USCIS charge fees for immigration benefits?

- A. Congress created a user fee account for the former Immigration and Naturalization Service (INS) in 1988, transforming it into a fee-based agency. USCIS continues to be a fee-based agency. This means that since 1988 the immigration benefit operation has operated under a user fee account instead of receiving appropriated funds for its daily operations. The transition from funds appropriated by Congress to a user fee to support immigration case processing means that the revenue from application fees support the agency's processing of each application. The Immigration and Nationality Act (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. The fee received must also pay for the infrastructure USCIS must develop and maintain to support case processing, and the administration of the nation's immigration laws.

¹ Based on USCIS' analysis, a typical Adjustment of Status applicant pays approximately \$800 when taking into account interim benefits over a multi year time period. The proposed increase is only \$105 over what they pay today.

Between FY02 and FY06, USCIS received a subsidy of appropriated funds each year for the specific purpose of backlog elimination. This subsidy of \$460 million was needed to address case processing backlogs as well as the insufficiency of the fee schedule. The growth of these backlogs was due in large part to failure to recover the full cost associated with the processing of applications; additional security checks and quality controls imposed following 9/11 that were not accounted for in the existing fee structure.

Q. What prompted this comprehensive fee review?

- A. USCIS conducted its last comprehensive fee review in FY 1998. A 2004 GAO report concluded that the 1998 fee review had not fully covered cost. USCIS has been cognizant of the shortfalls, but wanted to improve services before increasing fees. The current review focused on a careful examination of resources and activities funded by the Immigration Examinations Fee Account, which resulted in finding that the current fees do not reflect current processes or recover the full costs of services that should be provided. The revised fee schedule closes current funding gaps, expands national security and fraud detection initiatives, achieves performance and customer service goals, and reengineers technology and business processes. In addition, the Chief Financial Officer's (CFO) Act requires fees to be reviewed every two years. The Department of Homeland Security began being covered by the CFO Act with the passage of Public Law 108-330, enacted on October 16, 2004.

Q: Why doesn't USCIS just phase-in these increases over time to reduce the burden on applicants and petitioners?

- A. USCIS has marginally increased fees since its last comprehensive fee review in fiscal year 1998, when fees increased approximately 76 percent. The last fee increase accounted solely for inflation on October 26, 2005. The comprehensive fee review has made clear, however, that these marginal increases have not allowed USCIS to meet its mission responsibilities.

Since the proposed fees are based on current USCIS costs, phasing in costs would require either an appropriated subsidy to bridge the gap during the phase-in period, or a reduction in services that would result in increased processing times, backlog growth, inability to upgrade technology and modernize systems, and inability to implement security and anti-fraud measures.

Q. What are the consequences of not increasing fees?

- A. First, processing times would increase leading to backlogs which would eventually grow back to levels beyond what the agency faced at the height of its backlog in 2004. USCIS is concerned that the resulting backlogs could cause degraded national security capabilities increasing the vulnerability to fraud and abuse. Specifically, backlogs create significant public safety and national security risks as applicants remain in the U.S. unscreened while their applications are pending.

Q. How is it possible for USCIS' costs to increase so significantly?

- A. Part of the problem, as the GAO concluded in a 2004 report, is that the last major fee restructuring, which was implemented in 1998, did not fully recover USCIS' costs. Furthermore, additional security checks and quality controls imposed after September 11 are not accounted for in the existing fee structure.

In developing this proposed rule, USCIS reviewed its recent cost experiences, current service levels, goals for additional services, and various factors allocating costs to particular form types. This rule proposes a fee structure that will allow USCIS to close certain funding gaps, achieve security objectives, modernize its business infrastructure, accomplish performance goals, eliminate problematic incentives, the issuance of interim benefits, and fairly allocate costs.

Q. What will the \$524 million in “additional resource requirements” be use to fund? Why is this necessary and are these one-time costs?

- A. More than 70 percent of the additional resource requirements in the areas of customer service, security and operations can be directly tied to findings and recommendations identified by external organizations/offices that conducted independent reviews, for example GAO, DHS IG, and the CIS Ombudsman. These resources will be use to improve service delivery, enhance the security and integrity of the immigration system, to include a 20 percent decrease in processing times by fiscal year 2009, and modernize our business infrastructure. The additional resource requirements represent ongoing costs which will allow USCIS to continue to invest in these mission critical areas. USCIS remains committed to reviewing its fee structure every two years and can raise or lower fees based on its findings.

Q. In general, why are immigration benefit application fees so large?

- A. The cost of providing the right benefit to the right person, in an appropriate amount of time and without compromising security is a careful and complex process. The proposed fees not only reflect full cost recovery, but also the complexity of the various immigration and citizenship benefits that USCIS administers.

Fees reflect the cost of maintaining operations at a network of 250 domestic and international locations and Application Support Centers for fingerprint/photograph collection. While USCIS has achieved significant process improvements by centralizing certain functions, other functions and applicant interviews are most effectively offered locally.

Since September 11, 2001, USCIS’ costs to ensure a robust quality assurance function in identifying individual applicants who are a risk to national security or public safety, has grown substantially. USCIS completes more than 135,000 security and background checks daily.

It’s also important to keep in mind the large number of benefits provided for which there is no charge. USCIS waives the application/petition fee for various classes of applicants/petitioners, e.g., asylum and refugee applicants, and U.S. Armed Forces personnel. Further, the proposed new fee structure will exempt applicants for T nonimmigrant status (Victims of Human Trafficking), or for status under the Violence Against Women Act from paying certain fees.

Q. Why did USCIS take so long to conduct a comprehensive fee review?

- A. USCIS received feedback from various stakeholders that it should improve service levels first before taking on a comprehensive reform of the fee structure. One of those services was to eliminate the backlog without passing that cost on to applicants. USCIS met that challenge on time at the end of fiscal year 2006.

In January 2004, a Government Accountability Office (GAO) Report in January 2004 concluded that the “fees were not sufficient to fully fund [US] CIS’ operations.” GAO stated that “[i]n part, this has resulted because (1) the current fee schedule is based on an outdated fee study that did not include all costs of [US]CIS’ operations and (2) costs have increased since that study was completed due to an additional processing requirement and other actions.” GAO recommended that USCIS “perform a comprehensive fee study to determine the costs to process new immigration applications.” The fee review that is the basis for the proposed fees in this rule addresses that recommendation.

In addition, since fee revenues have been insufficient to recover full operating costs, USCIS has been forced to rely on funding from temporary programs, to use premium processing funds for base infrastructure rather than for major business infrastructure improvements to the adjudication and customer-service processes, and to use fees from pending applications to fund applications being

processed. This insufficiency has delayed necessary investment in a new technology and business process platform to substantially improve USCIS' capabilities and service levels-the purpose originally envisioned by Congress when it first established the premium-processing program.

Q. What if an applicant/petitioner cannot afford the fee?

- A. USCIS has historically waived the application/petition fee for entire classes of applicants. For example, there is no fee for filing an application for asylum, nor for members of the U.S. Armed Forces filing for naturalization. USCIS also has the ability to waive fees on a case-by-case basis for "inability to pay." USCIS considers waiving the fee for a single individual based on his or her circumstances when all others in similar circumstances applying for the same benefit or service must pay the fee. In determining "inability to pay", USCIS officers consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit.

In tandem with the proposed increase in fees, USCIS proposes to modify and clarify eligibility for an individual fee waiver. Individual fee waiver requests have been rising, both in terms of total volume and as a percentage of applications filed. The process of considering a fee waiver request itself has a significant associated adjudication cost.

Since USCIS is funded from application fees, a fee waiver transfers the cost to all other fee-paying applicants. Fairness requires that there be compelling reasons when granting an individual fee waiver to one applicant while making others applying for the same benefit or service pay full cost plus a surcharge to pay for the free service provided to the first customer.

This rule clarifies the fee waiver process by limiting fee waivers to certain situations. Specifically, the proposed rule limits the list of applications for which an individual fee waiver based on inability to pay may be granted to the Form I-90; Form I-751; Form I-765; Form I-817; Form N-300; Form N-336; Form N-400; Form N-470; Form N-565; Form N-600; Form N-600k; and the Forms I-290B and motions filed with USCIS.

Q. What is the legal authority for USCIS to charge fees?

- A. USCIS fees are determined under the authority of section 286(m) of the Immigration and Nationality Act, which authorizes USCIS to set fees at a level that will recover the full costs of USCIS services, including those provided to some applicants without fee.

Q. Will USCIS conduct another fee review?

- A. Yes. USCIS plans to review fees every two years to ensure that it is recovering the full cost of processing immigration benefit petitions/applications. USCIS is committed to update its fees through a similar analysis at least once every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences and incorporate productivity gains resulting from the modernization of USCIS operations (which may allow for cost reductions from new efficiencies) and from prospective activity changes (such as those that may arise from additional security measures or performance changes).

Q. Will USCIS continue to raise fees? What is being done to improve efficiencies in the process?

- A. USCIS continues to seek ways to improve productivity while decreasing costs. USCIS is firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of its customers. Large portions of this fee restructuring are designed to

invest revenue in improvements to improve efficiency and effectiveness that will help reduce agency costs. Additionally, for the first time, USCIS has incorporated a productivity measure into the fee model to ensure that productivity gains resulting from automated business processes and better technology will be factored into future fee reviews.

Q. You have increased fees before with the promise of improved service. Why is this fee increase any different?

- A. There are two key differences. First, the clear distinction between this proposed fee schedule and prior fee schedules is that the proposed fee schedule does not simply reflect costs and performance retrospectively, locking USCIS into a revenue stream that at best allows it to maintain the status quo. Instead the proposed fee schedule is designed to provide for an adequate and sustainable level of investment in staff, infrastructure, and processes designed to improve USCIS' ability to administer the nation's immigration laws.

Second, the recent temporary infusion of appropriated dollars has allowed USCIS to significantly improve service levels at no additional cost to applicants. Thus tomorrow's customers are not being asked to pay higher fees to allow us to process yesterday's backlogged cases. Rather, they are simply being asked to pay the full cost of processing their application, including costs that help maintain an organization that will continue to achieve ongoing improvements in efficiency and effectiveness. The immigration benefits that USCIS confers are truly valuable and it is appropriate that prospective immigrants bear the full costs of the service provided.

Q. Why should applicants and petitioners pay higher fees for an inefficient process? USCIS should first become more efficient with improved service levels before it considers a fee increase.

- A. USCIS has delayed this comprehensive fee review because we listened to our stakeholders who asked us to improve service levels first. USCIS has already substantially improved service levels, achieving the President's goal of six months processing times for immigration applications in October of 2006. Even in the absence of full funds to do so, USCIS has undertaken to improve its customer service and national security processes. Yet the necessary improvements, which we all seek to meet the agency's mission and enhance our current efforts, cannot be met without the necessary financial resources to permanently improve our business model in an entirely fee-funded environment.

Q. What will be the overall impact of this proposed rule?

- A. USCIS will be better positioned to fully secure the integrity of our immigration system, to improve fraud prevention and detection efforts, and to introduce new national security enhancements to create a fair and equitable immigration system that ensures public safety.

Applicants and petitioners will see substantially improved service under a new fee structure, with average processing times projected to be reduced by as much as 20 percent by the end of fiscal year 2009. Secure documents will be delivered faster and customer requests for immigration records will be made more efficient. This effort will be bolstered by USCIS' transformation from its current paper-based data systems into digital processing resources and expanded on-line services, including e-filing and end-to-end electronic processing capabilities. Improvements in service will be more than cosmetic, as our strategy will provide greater access by USCIS customers to office locations and information.

Investments to modernize our business infrastructure will fundamentally transform the United States' immigration services for years to come. Information systems will be updated to improve service delivery, expand on-line service options and largely eliminate paper-based processes. Finally, the timeliness of background checks and anti-fraud efforts will be improved by various initiatives, such as expanding name check resolution capabilities and adjusting resources at co-located facilities as required.

As a result of these improvements, USCIS is poised to begin a new chapter in its critical national mission with an updated fee structure directly corresponding to the growing costs of administering a secure and efficient immigration system for the 21st century. By creating a fair means to ensure the recovery of operational costs, USCIS will fulfill its responsibility to the American people to protect our Nation and maintain the integrity of our national immigration system.

Q. Why doesn't USCIS continue to receive appropriated funds instead of receiving fees?

- A. Congress created a user fee account for the former INS in 1988, transforming it into a fee-based agency. As a fee-based agency, USCIS uses revenue from application fees rather than appropriated funds to pay for the administration of the nation's immigration laws, processing of applications, and the infrastructure needed to support these activities. It is the policy of the United States government, reflected in OMB Circular A-25 to fully recover the cost of providing benefits and services. Congress determines the amount and source of USCIS funds in its annual appropriations legislation, subject to Presidential action on enacted bills. The Administration has directed USCIS to become fully fee funded with respect to its adjudicative activities of immigrant petitions. This allows the business costs to be supported by its consumers.

Q. How may I provide comments on the proposed fee increases?

- A. To comment on the proposed rule, USCIS requests the public to submit written comments by one of the following methods:
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - Facsimile: Federal eRulemaking portal at 866-466-5370.
 - Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-0044 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
 - Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.